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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

APR 24 2003

FILE:

Office: Texas Service Center

Date:

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified her decision to the Administrative Appeals Office (AAO) for review. The case will be remanded to the director for further action.

The applicant is a native of Cuba and citizen of Italy who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. This Act provides, in pertinent part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The director determined that the applicant was not eligible for adjustment of status, pursuant to section 1 of the Cuban Adjustment Act, because his claim of citizenship at the time of entry into the United States was Italian. The director stated that the Board, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), came to the conclusion that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. The director concluded that the Service considers the applicant a national of Italy for immigration matters; therefore, he is not able to adjust status under section 1 of the Act of November 2, 1966.

In response to the notice of certification, the applicant submits additional evidence and states that he and his children are nationals of Cuba as they were born in Cuba, and that they are citizens of Italy as his children were attending school there.

The record reflects that the applicant was born in Cuba on April 24, 1963, to a Cuban mother and a Cuban father. The applicant entered the United States as a visitor on January 10, 2001, with an Italian passport.

The applicant in this case is applying for adjustment of his status to permanent residence under section 1 of the CAA. To be eligible for adjustment of status under section 1 of the CAA, an alien must show only that he is a native or citizen of Cuba, he was inspected and admitted or paroled into the United States, he has been physically present in the United States for at least one year, and

that he is admissible to the United States for permanent residence. See *Matter of Masson*, 12 I&N Dec. 699 (BIA 1968).

The applicant, in this case, was born in Cuba. He is, therefore, a native of Cuba, he was inspected and admitted into the United States subsequent to January 1, 1959, and he has been physically present in the United States for at least one year. He is, therefore, not precluded from adjustment of status under section 1 of the Cuban Adjustment Act of November 2, 1966.

The clearance letter from the Miami-Dade Police Department, however, reflects that the applicant has misdemeanor record(s) filed with the County Court. The record of proceeding is devoid of evidence to show that the applicant was requested to submit arrest reports and the court's final dispositions of all his arrests.

Therefore, the case will be remanded in order that the director may accord the applicant an opportunity to submit his arrest and conviction records. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.